

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:11-cv-0101

\$27,671.50, MORE OR LESS,
IN UNITED STATES CURRENCY,

Defendant.

(Katherine Anne Hoover, and
John F. Tomasic;
No pending federal criminal charges)

UNITED STATES MOTION TO DISMISS COMPLAINT

Comes now the United States of America, by counsel, Betty A. Pullin, Assistant United States Attorney for the Southern District of West Virginia, and hereby moves this court, pursuant to Rule 41(a)(2), Federal Rules of Civil Procedure, for an Order dismissing the complaint. As grounds for this motion, the United States provides as follows:

1. The defendant currency originally was seized by the United States pursuant to a federal seizure warrant issued on or about February 25, 2010, in Case No. 2:10-mj-00029 (USDC SDWV). The monies constituted the balance of Wesbanco Passbook Savings Account No. XXXXXX3002, in the names of Katherine Hoover and John Tomasic. The affidavit in support of the application for seizure warrant in 2:10-mj-00029 revealed a significant ongoing

GOVERNMENT
EXHIBIT

B

investigation into the unlawful distribution of controlled substances by physicians, and medical and office staff, of a medical clinic operating in Williamson, Mingo County, West Virginia. At the time, Katherine Hoover was one of the physicians associated with the clinic. As evident by the affidavit in support of the application for seizure warrant, the evidence obtained in the investigation revealed the clinic operated primarily on a cash basis, charging each patient at least \$150 per office visit occurring on a monthly basis; patients were seldom seen by physicians yet given prescriptions on a monthly basis for highly addictive and widely abused controlled substances such as hydrocodone and xanax; and due to the large volume of patients seen at the clinic on a daily basis, it was estimated that the clinic was grossing in excess of \$4 million per year just from the cash payments for monthly office visits by the patients. Based on these facts as more fully detailed in the affidavit for the seizure warrant, and lack of any known source of legitimate income for Hoover other than her wages from the medical clinic, the government applied for and obtained the seizure warrant to seize her accounts at Wesbanco Bank.

2. Subsequent to the seizure of the account, the FBI began administrative forfeiture proceedings against the monies seized

from the account, as required in 18 U.S.C. § 983(a)(1).¹ Katherine Hoover filed a claim with the FBI in the administrative forfeiture action on November 15, 2010, which resulted in the FBI ceasing its administrative forfeiture action and referring the seizure to the undersigned counsel for the United States to initiate this judicial forfeiture action within 90 days from the date of Hoover filing her claim, or by February 13, 2011, as required by 18 U.S.C. § 983(a)(3)(A).

3. In the week prior to the filing of this in rem forfeiture action on February 11, 2011, the United States had copies of the December 2008 and December 2009 annual statements of passbook savings account no. XXXXXX3002, which revealed the account had a balance in excess of \$27,000, but neither of those statements revealed the source of the balance of the account.

4. This forfeiture action filed on February 11, 2011, within 90 days from the date of filing of the administrative claim, was based on the probable cause finding by the Magistrate Judge that the monies in this and another Wesbanco account constituted or were traceable to proceeds from the illegal distribution of controlled substances at the medical clinic. The undersigned also relied on 18 U.S.C. § 983(c)(1)(2) which provides that "...the Government may

¹See, Docket #13, Memorandum in Support of United States Response etc., for the procedural history of the administrative proceedings.

use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; ..."

5. Subsequent to the filing of the complaint in this proceeding, the United States obtained additional records regarding the Wesbanco passbook savings account no. XXXXXX3002 for the period January 1, 2002 through March 10, 2010. These records were received by the government on Tuesday, April 5, 2011. A review of these records indicates that on March 12, 2004, a deposit was in fact made into the Wesbanco Savings Account No. XXXXXX3002, in the amount of \$22,000. A copy of the check accompanying the deposit slip shows "gift" in the memo line and the check is from the Hoover Trust. There are no other deposits into or withdrawals from the savings account during that time period other than deposits of interest income accruing on the balance of the account. Accordingly, the United States concurs that the balance of the savings account does not appear to be proceeds traceable to the controlled substance violations occurring at the medical clinic in Williamson, West Virginia.

WHEREFORE, based on the foregoing, the United States respectfully moves the court for an order dismissing this forfeiture action and directing the United States Marshals Service to return the seized currency to Ms. Hoover and Mr. Tomasic.

Respectfully submitted,

UNITED STATES OF AMERICA
By Counsel

R. BOOTH GOODWIN II
United States Attorney

By: s/Betty A. Pullin
Betty A. Pullin, WV Bar Number: 5590
Attorney for the United States
United States Attorney's Office
300 Virginia Street, East, Room 4000
Charleston, West Virginia 25301
Telephone: (304) 345-2200
Fax: (304) 347-5440
Email: betty.pullin@usdoj.gov

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:11-cv-0101

\$27,671.50, MORE OR LESS,
IN UNITED STATES CURRENCY,

Defendant.

(Katherine Anne Hoover, and
John F. Tomasic;
No pending federal criminal charges)

CERTIFICATE OF SERVICE

I hereby certify that the "UNITED STATES MOTION TO DISMISS
COMPLAINT" was electronically filed with the Court and served on
the following, on this 8th day of April, 2011:

Katherine Anne Hoover, M.D. and
John F. Tomasic
c/o Norman Gay, M.D.
247 West Bay Street
Nassau, N.P. Bahamas
(via Federal Express International)

By: s/Betty A. Pullin
Betty A. Pullin, WV Bar Number: 5590
Attorney for the United States
United States Attorney's Office
300 Virginia Street, East, Room 4000
Charleston, West Virginia 25301
Telephone: (304) 345-2200
Fax: (304) 347-5440
Email: betty.pullin@usdoj.gov

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-1087
(Lead Action)

\$88,029.08, MORE OR LESS,
IN UNITED STATES CURRENCY,

Defendant

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:11-0101
(Consolidated action)

\$27,671.50, MORE OR LESS,
IN UNITED STATES CURRENCY,

Defendant.

UNITED STATES MOTION FOR
CERTIFICATE OF REASONABLE CAUSE

Comes now the United States of America, by counsel, Betty A. Pullin, Assistant United States Attorney for the Southern District of West Virginia, and hereby moves the court for the issuance of a Certificate of Reasonable Cause, as authorized by 28 U.S.C. § 2465(a)(2), with regard to the seizure of \$27,671.50, more or less, seized from claimant Katherine A. Hoover's Wesbanco Account No. XXXXXX3002 and which the court has directed its return pursuant to its Memorandum Opinions entered August 8, 2011, and September 28, 2012 (ECF 93, 158). In support of its motion, the United States attaches hereto and incorporates herein the following:

(1) the Seizure Warrant, Application for seizure warrant and Affidavit in support, filed in Case No. 2:10-mj-0002 ("Govt. Ex. A"), and (2) the United States Motion to Dismiss Complaint filed on April 8, 2011 (ECF 76). The United States also incorporates herein the legal authority set forth in a memorandum of law being filed simultaneously with this motion.

WHEREFORE, for the foregoing reasons and for those stated in the accompanying memorandum of law, the United States requests that the court issue a Certificate of Reasonable Cause with regard to the seizure of the \$27,671.50, more or less, seized from Wesbanco Savings Account No. XXXXXXXX3002.

Respectfully submitted,

UNITED STATES OF AMERICA
By Counsel

R. BOOTH GOODWIN II
United States Attorney

By: s/Betty A. Pullin
Betty A. Pullin, WV Bar No. 5590
Attorney for the United States
United States Attorney's Office
300 Virginia Street East, Room 4000
Charleston, West Virginia 25301
Telephone: (304) 345-2200
Telefax: (304) 347-5440
Email: betty.pullin@usdoj.gov